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titled to recover, a verdict for defendant will not be reversed for the error of the court in giving or refusing instructions, since a different verdict could not have been rightly found by the jury.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, § 4227.]

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VEITCH *v.* JENKINS.

June 13, 1907.

[57 S. E. 574.]

**1. Master and Servant—Independent Contractors and Their Employees—Actions for Negligence of Servants.**—L. engaged to purchase material, employ labor, and superintend and erect for plaintiff a certain building, in accordance with certain plans, and to use his best efforts to secure material and labor at the lowest cost, and to render to plaintiff a true account thereof. The estimated cost of the building was not to be exceeded by L. without the consent of plaintiff. L. guaranteed that the workmanship should be first-class, and plaintiff agreed to pay the net cost of material and labor, together with a commission to L. Held, that L. was an independent contractor, and there was no such privity between his employee and plaintiff as would render the employee answerable to plaintiff in damages for defective work.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 34, Master and Servant, § 1242.]

**2. Trial—Questions for Jury—Contracts—Construction by the Court.**—Where the relations between parties depended on a written contract unambiguous in its terms, it was the province of the court to construe the instrument, and as a matter of law to determine the relation between the parties.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 46, Trial, § 326.]

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TALIAFERRO *v.* SHEPHERD et al.

June 13, 1907.

[57 S. E. 585.]

**1. Appeal—Review—Estoppel to Allege Error.**—Where defendant made no objection to the admissibility of evidence, and made no motion to exclude it, and tendered evidence to meet it, he could not complain on appeal that it was not admissible under the declaration.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 2, Appeal and Error, §§ 1258-1280.]

**2. New Trial—Newly Discovered Evidence—Diligence.**—In order to entitle one to a new trial on the ground of newly discovered evi-

dence, it must be shown that it could not have been produced by reasonable diligence.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 37, New Trial, §§ 210-214.]

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TAX TITLE CO. *v.* DENOON.

June 13, 1907.

[57 S. E. 586.]

**Quieting Title—Title of Plaintiff—Equitable Title.**—One who has only an equitable interest in land, under a contract providing that the same would be conveyed when he so directed, or authorizing him to sell the same under either of the mortgages thereon, cannot maintain a bill to declare a tax deed of the premises void and remove the same as a cloud upon his title.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Quieting Title, §§ 36-38.]

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WESTERN UNION TEL. CO. *v.* CHILES.

June 13, 1907.

[57 S. E. 587.]

**1. Appeal—Jurisdiction—Constitutional Questions.**—Where the jurisdiction of the Supreme Court depends solely on the alleged unconstitutionality of a statute which is found to be constitutional, no other questions in the case will be considered.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 3, Appeal and Error, §§ 3259, 3260.]

**2. Commerce—Regulation—Telegraph Companies—Penalties.**—Code 1904, § 1294h, cl. 6, imposing a penalty on telegraph companies for failure to deliver messages, in so far as applied to a message sent from a point within the state to a naval officer in the Norfolk Navy Yard, was not in violation of the commerce clause of the federal Constitution as an attempt to regulate commerce between the states or with foreign nations, etc.

**3. Telegraphs—Messages—Failure to Deliver—Penalties.**—Code 1904, § 1294h, cl. 6, imposing a penalty on telegraph companies for failure to deliver messages, was valid and applicable in case of a telegraph company's failure to deliver a message sent from a point within the state to a naval officer stationed at the Norfolk Navy Yard, which was under the exclusive jurisdiction of the federal government.